

CHAPTER 576

S.B. No. 359

AN ACT

relating to the continuation and operation of the Board of Law Examiners and to the functions of the board and the state supreme court concerning the licensing of attorneys.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (b), Section 82.001, Government Code, is amended to read as follows:

(b) The supreme court biennially shall appoint the members of the board for two-year terms that expire *August 31* ~~[September 30]~~ of each odd-numbered year. A member is subject to removal by the supreme court *as provided by Section 82.0021* ~~[for incompetency or inattention to duty]~~.

SECTION 2. Subchapter A, Chapter 82, Government Code, is amended by adding Section 82.0021 to read as follows:

Sec. 82.0021. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the Board of Law Examiners if a member:

(1) does not have, at the time of appointment, the qualifications required by Section 82.001;

(2) does not maintain during service on the board the qualifications required by Section 82.001;

(3) violates a prohibition established by Section 82.002;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability;

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend in a calendar year unless the absence is excused by a majority vote of the board;

(6) is incompetent; or

(7) is inattentive to the member's duties.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the ground. The chairman shall then notify the supreme court that a potential ground for removal exists.

SECTION 3. Section 82.004, Government Code, is amended by adding Subsection (e) to read as follows:

(e) In each city in which an examination is administered, the board shall provide facilities that enable persons having physical, mental, or developmental disabilities to take the examination.

SECTION 4. Section 82.006, Government Code, is amended to read as follows:

Sec. 82.006. SUNSET PROVISION. The Board of Law Examiners is subject to [the Texas Sunset Act (Chapter 325 (Texas Sunset Act)). Unless continued in existence as provided by that chapter, the board is abolished December 31 [September 1], 1991. The abolition date prescribed by this subsection does not require the Sunset Advisory Commission to conduct any review or prepare any report other than the review undertaken before the convening of the 72nd Legislature, Regular Session, 1991, or the report submitted to that legislature.

SECTION 5. Subchapter A, Chapter 82, Government Code, is amended by adding Sections 82.007, 82.008, and 82.009 to read as follows:

Sec. 82.007. PERSONNEL. (a) The executive director of the Board of Law Examiners or the executive director's designee shall develop an intraagency career ladder

program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

(c) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this subchapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

(e) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the board's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the board's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underutilization.

(f) A policy statement prepared under Subsection (e) must cover an annual period, be updated at least annually, and be filed with the supreme court and the governor's office.

(g) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (f). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 82.008. PUBLIC INFORMATION. (a) The Board of Law Examiners shall prepare information of public interest describing the functions of the board. The board shall make the information available to the public and appropriate agencies.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board. However, the board may prohibit public testimony that would reveal the examination questions described by Section 82.003(b) or would relate to the moral character or fitness of an applicant for a license.

Sec. 82.009. PROGRAM ACCESSIBILITY. The Board of Law Examiners shall prepare and maintain a written plan that describes how a person who has a physical, mental, or developmental disability can be provided reasonable access to the board's programs.

SECTION 6. Section 82.023, Government Code, is amended by amending Subsection (d) and adding Subsections (e), (f), and (g) to read as follows:

(d) If the board determines that an applicant does not have acceptable character and fitness, the notice of the decision must be accompanied by an analysis of the character investigation that specifies in detail the results of the investigation. The analysis must include an objective list of actions the applicant may take to become qualified for a license to practice law.

(e) If the board determines that an applicant may suffer from chemical dependency, the board shall require the applicant to meet with representatives of the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar and may require the applicant to submit to a treatment facility for evaluation.

(f) If the board determines that an applicant suffers from chemical dependency, the board shall assist the applicant in working with the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar.

(g) In this section:

(1) "Chemical dependency" has the meaning assigned by Section 82.038.

(2) "Treatment facility" has the meaning assigned by Section 462.001, Health and Safety Code.

SECTION 7. Section 82.024, Government Code, is amended to read as follows:

Sec. 82.024. **LAW STUDY REQUIREMENTS; ELIGIBILITY FOR EXAMINATION.** A person who has completed the prescribed study in an approved law school has satisfied the law study requirements for taking the examination for a license to practice law *and is eligible to take the bar examination.* An approved law school is one that is approved by the supreme court for the time period designated by the court as maintaining the additional standards to retain approval.

SECTION 8. Subchapter B, Chapter 82, Government Code, is amended by adding Section 82.0271 to read as follows:

Sec. 82.0271. **RESIDENCY OR CITIZENSHIP STATUS OF APPLICANT.** *A person who has applied to take the bar examination may not be denied admission to the bar examination based on the applicant's lack of:*

(1) permanent residency in the United States; or

(2) United States citizenship.

SECTION 9. Section 82.030, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) If the board determines that the applicant does not have the requisite good moral character and fitness, the board, not later than the 150th day after the day on which the application is filed, shall furnish the applicant an analysis of the character investigation that specifies in detail the results of the investigation. The analysis must include an objective list of actions the applicant may take to become qualified for a license to practice law.

(c) If the board determines that an applicant may suffer from chemical dependency, the board shall require the applicant to submit to a treatment facility for evaluation.

(d) If the board determines that an applicant suffers from chemical dependency, the board shall assist the applicant in working with the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar.

(e) The board may not deny an applicant the opportunity to take the bar examination solely because the applicant:

(1) suffers or appears to suffer from chemical dependency; or

(2) has been convicted of or is on probation for a first offense of driving while intoxicated under Article 67011-1, Revised Statutes.

(f) In this section:

(1) "Chemical dependency" has the meaning assigned by Section 82.038.

(2) "Treatment facility" has the meaning assigned by Section 462.001, Health and Safety Code.

SECTION 10. Subsection (a), Section 82.031, Government Code, is amended to read as follows:

(a) The supreme court shall appoint a district committee on admissions in each of the state bar districts to investigate qualifications for admission to the bar. A district committee must be composed of at least 15 members. In making the appointments, the supreme court shall attempt to ensure full and fair representation of the general public, including women, minorities, and retired persons who are at least 55 years of age. Each appointment must be made without regard to race, creed, sex, religion, or national origin.

SECTION 11. Section 82.035, Government Code, is amended to read as follows:

Sec. 82.035. **AUDIT; FINANCIAL REPORT.** (a) The financial transactions of the Board of Law Examiners are subject to audit by the state auditor in accordance with Chapter 321[~~Government Code~~].

(b) *The board shall file annually with the supreme court, the governor, and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received or disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.*

SECTION 12. Section 82.036, Government Code, is amended to read as follows:

Sec. 82.036. **FOREIGN ATTORNEYS.** [(a)] *The supreme court shall make such rules and regulations as to admitting attorneys from other jurisdictions to practice law in this state as it shall deem proper and just. All such attorneys shall be required to furnish satisfactory proof as to good moral character [Board of Law Examiners shall recommend to the supreme court that it license and the supreme court shall issue a license to an applicant who:*

(1) has practiced law for at least three years; and

(2) has a license to practice law issued by another state whose licensing standards are at least equivalent to the licensing standards of this state.

(b) If an applicant is from another state whose licensing standards are not equivalent to or do not exceed those of this state but the applicant otherwise meets the requirements of Subsection (a), the board may require the applicant to take the examination for a license to practice law.

(c) All foreign attorneys licensed as provided by this section must furnish satisfactory proof of good moral character and fitness].

SECTION 13. Subchapter B, Chapter 82, Government Code, is amended by adding Section 82.038 to read as follows:

Sec. 82.038. **PROBATIONARY LICENSE FOR APPLICANT SUFFERING FROM CHEMICAL DEPENDENCY.** (a) *If, after a moral character and fitness assessment, the Board of Law Examiners determines that the applicant suffers from chemical dependency, the board shall notify the applicant of its determination and of the applicant's rights under this section.*

(b) *To obtain judicial review of the board's determination that the applicant suffers from chemical dependency, an applicant must file a petition in the district court of Travis County before the 60th day after the date that the board delivers notice of its determination. The petition must name the board as a defendant and be served on the executive director of the board. Before the date on which the applicant may obtain a default judgment against the board, the board shall file with the district court a certified record of the proceedings before the board.*

(c) *A party is not entitled to a jury in a judicial review of the board's determination that an applicant suffers from chemical dependency. The court may not substitute its judgment for that of the board as to the weight of the evidence on questions submitted to the board's discretion but shall affirm the board's decision if the decision is reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole.*

(d) *The board may not deny a person who successfully takes the bar examination a probationary license to practice law solely because the person:*

(1) suffers from chemical dependency; or

(2) has been convicted of or is on probation for a first offense of driving while intoxicated under Article 6701l-1, Revised Statutes.

(e) *The board shall specify the conditions of a probationary license to practice law, which must be designed to protect the public from the potential harm the person might cause. Conditions of a probationary license may include one or more of the following:*

- (1) prohibiting the person from using alcohol or controlled substances;
- (2) treatment for chemical dependency;
- (3) supervision of the person's work by a licensed attorney;
- (4) submission to periodic drug testing;
- (5) periodic reporting by the person to the board; or
- (6) suspension, for a portion of the probationary period, of an activity for which a license to practice law is required.

(f) A probationary license issued under this section expires on the second anniversary of the date on which the license is issued. A person who holds a probationary license may apply for a renewal of the probationary license or for a regular license to practice law. The board, after redetermination of the character and fitness of a person who holds a probationary license, may recommend to the supreme court that it grant the person a regular license to practice law. The redetermination must include an evaluation of the person by a treatment facility. The board may not recommend to the supreme court that the person be granted a regular license to practice law unless the board finds that the person has successfully completed treatment and has been free from chemical dependency for the preceding two years.

(g) The supreme court shall adopt rules under which the board and the State Bar of Texas jointly develop and fund a program for evaluation and referral to treatment for persons who have been issued a probationary license under this section.

(h) A probationary license may be immediately revoked if the person violates a condition of probation imposed by the board.

(i) In this section:

(1) "Chemical dependency" means:

- (A) the abuse of alcohol or a controlled substance;
- (B) a pathological use of alcohol or a controlled substance that chronically impairs the applicant's ability to competently provide legal advice or services; or
- (C) a physiological or physical dependence on alcohol or a controlled substance.

(2) "Controlled substance," "treatment facility," and "treatment" have the meanings assigned by Section 462.001, Health and Safety Code.

SECTION 14. (a) The change made by this Act to Subsection (b), Section 82.001, Government Code, relating to the expiration date of the terms of members of the Board of Law Examiners, applies only to members' terms expiring in 1993 or a later odd-numbered year. Members' terms expiring in 1991 expire September 30, 1991.

(b) The first policy statement required to be filed under Subsection (f), Section 82.007, Government Code, as added by this Act, must be filed before November 1, 1991.

SECTION 15. Section 82.026, Government Code, is repealed.

SECTION 16. This Act takes effect September 1, 1991.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 10, 1991, by a viva-voce vote; May 26, 1991, Senate refused to concur in House amendment and requested appointment of Conference Committee; May 26, 1991, House granted request of the Senate; May 27, 1991, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendment, on May 25, 1991, by a non-record vote; May 26, 1991, House granted request of the Senate for appointment of Conference Committee; May 27, 1991, House adopted Conference Committee Report by a non-record vote.

Approved June 15, 1991.

Effective September 1, 1991.